

C O P Y

November 1, 1954

Richard C. Duncan, Esq.,
Assistant Attorney General

Attorney General

Request for interpretation of R.L. c. 130 s. 1,
as inserted by c. 243, Laws of 1949

James J. Barry, Commissioner,
Department of Public Welfare

Dear Mr. Barry:

You have inquired by your letter of October 26, 1954, as to the meaning of the above section with particular emphasis upon the word "assist" as contained therein. This section reads as follows:

"1. Child-Placing Agency. A child-placing agency is defined for the purposes of this chapter as any person, firm, corporation or association who places or assists in the placement of any child under the age of sixteen other than his own in homes of persons other than relatives by blood or marriage for adoption or foster care."

It is clear that a child-placing agency does not exist where one places his own child or a child is placed in the home of a person related by blood or marriage. By definition a child-placing agency exists where a third person (either an individual, firm, corporation or association) places or assists in the placement of any child under the age of sixteen in a home of persons not related by blood or marriage to the child. In order to determine whether any such third person is acting as a child-placing agency, it would be necessary to ascertain whether he "places or assists in the placement" of a child within the meaning of the chapter.

To fall within this meaning, some affirmative action on the part of the suspected child-placing agency by which an actual placement is made would be needed. It would not appear that acting as a mere intermediary between the parents and the adoptive parents would be enough. By this I have reference to the case where one person knows of a child available for adoption and also people who would like to adopt a suitable child. If because of this knowledge he makes it possible for surrender of the child for adoption, it is my opinion he is not acting as a child-placing

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agency. However, if such a person affirmatively seeks a child suitable for adoption for prospective adoptive parents, or affirmatively seeks adoptive parents for any child, it is my opinion that he would be acting as a child-placing agency.

It should be kept in mind that the chapter is directed towards the elimination of so-called "black market" adoptions and the evil sought to be eliminated is not present in the case of the mere intermediary. Were a stricter construction placed upon the section, conversation which resulted in a future adoption could well be construed by some as assistance.

I recognize that this distinction is very fine and will require close examination of most cases upon an individual basis, ^{but} ~~one~~ ^{the} I believe proper as the penalty for a violation of said chapter 130 is criminal.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD:HP